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Attorneys for Defendants VERIFONE HOLDINGS, INC.,
DOUGLAS G. BERGERON, and BARRY ZWARENSTEIN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE VERIFONE HOLDINGS, INC.
SECURITIES LITIGATION

) Master File No.

) C 07-6140 MHP

) **CLASS ACTION**

This Document Relates To: All Actions

) **DEFENDANTS VERIFONE HOLDINGS,
INC., DOUGLAS G. BERGERON AND
BARRY ZWARENSTEIN'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED PURSUANT TO
CIVIL LOCAL RULE 3-12**

) Judge: The Hon. Marilyn H. Patel
) Courtroom: 15

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that Defendants VeriFone Holdings, Inc. ("VeriFone"),
 3 Douglas G. Bergeron, and Barry Zwarenstein submit this Administrative Motion to Consider Whether
 4 Cases Should be Related pursuant to Civil Local Rule 3-12.

5 **A. RELATED CASES**

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- 7 1. *In re VeriFone Holdings, Inc. Securities Litigation*, Master File No. C 07-6140 MHP,
 8 which, prior to being related and consolidated, consisted of nine putative class
 9 actions, filed between December 4, 2007 and January 7, 2008. In an order dated
 10 February 5, 2008, those nine actions were consolidated and assigned to the Honorable
 11 Marilyn H. Patel.
- 12 2. *King v. Bergeron et al.*, Case No. C 07-6347 PVT, Verified Derivative Complaint for
 13 Breach of Fiduciary Duty. This purported derivative action was filed on December
 14 14, 2007 and assigned to the Honorable Patricia V. Trumbull.

15 **B. RELATIONSHIP OF THE ACTIONS**

16 Pursuant to Civil Local Rule 3-12, cases should be related where they concern
 17 substantially the same parties, property, transaction or event and it is likely that there will be an unduly
 18 burdensome duplication of labor and expense or conflicting results if the cases are conducted before
 19 different Judges. Each of these factors is met here.

20 The nine putative class actions consolidated in *In re VeriFone Holdings, Inc. Securities*
 21 *Litigation* ("*In re VeriFone*") and the derivative action *King v. Bergeron et al.* each concern
 22 substantially the same parties and events. As a result, if these cases are conducted before different
 23 Judges of this Court, there will be an unduly burdensome duplication of effort and unnecessary
 24 consumption of judicial resources. The putative class action complaints filed in the cases that have now
 25 been consolidated into *In re VeriFone* and the complaint filed in *King v. Bergeron et al.* name VeriFone,
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1 Douglas G. Bergeron, and Barry Zwarenstein as defendants or nominal defendants and concern the same
2 alleged intentional misrepresentations and purportedly misleading financial statements made between
3 August 2006 and November 2007.

4 Each of the nine securities fraud cases and the derivative action were filed in the wake of,
5 and arise directly from, VeriFone's December 3, 2007 announcement that it would be restating certain
6 of its financial statements for fiscal year 2007 – with eight of the nine class action complaints
7 consolidated in *In re VeriFone* and the complaint filed in *King v. Bergeron et al.* all filed within two
8 weeks of that announcement.
9

10 Each action alleges that VeriFone made particular statements regarding its financial
11 position in several press releases and SEC Form 10-Qs, that VeriFone's directors and officers were or
12 should have been aware of the statements and had authority to prevent them from being disseminated to
13 the public, that the actual situation at VeriFone was materially different than what was indicated in the
14 press releases and SEC forms, and that certain directors and officers sold their VeriFone shares at a
15 profit during the class period and acted with intent to mislead investors. The putative class action
16 complaints all assert that the directors' and officers' actions violated the Securities Exchange Act
17 Section 10(b) and Rule 10b-5, and that the directors and officers are liable pursuant to Section 20(a) of
18 the Exchange Act. The derivative action complaint alleges state law fiduciary duty and corporate waste
19 claims on substantially the same facts. Because the same facts will be developed for the securities class
20 action complaints, and because the same legal questions will be addressed, relating these cases would
21 promote efficiency and avoid duplication of evidence and motion filing. By contrast, to have different
22 Judges of this Court direct the same inquiries and conduct the same analyses regarding the facts and law
23 surrounding the same alleged misconduct and events would increase substantially the possibility of
24 inconsistent rulings and outcomes, and will undermine an orderly approach to addressing these ten
25 complaints.
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1 Relating these cases is appropriate even though *King v. Bergeron et al.* asserts derivative
 2 claims and the consolidated cases in *In re VeriFone* allege claims for securities fraud. Courts routinely
 3 *consolidate*, not merely relate, derivative and class action cases arising from the same underlying events
 4 and involving the same parties. *See, e.g., Janas v. McCracken*, 183 F.3d 970, 982 (9th Cir. 1999)
 5 (noting district court's prior consolidation of securities class action and three shareholders' derivative
 6 suits arising in part from same series of misleading financial statements and involving similar claims); *In*
 7 *re Oracle Sec. Litig.*, 829 F. Supp. 1176, 1178 (N.D. Cal. 1993) (noting court's prior consolidation of
 8 nineteen securities class actions and two shareholders' derivative suits arising from same earnings press
 9 release and involving similar claims); *Schrivver v. Impac Mortg. Holdings, Inc.*, 2006 U.S. Dist. LEXIS
 10 40607, *5-*6 (C.D. Cal. 2006) (consolidating five securities class actions and three shareholders'
 11 derivative suits under similar circumstances where cases arose from same set of financial press releases
 12 and Form 10Qs issued by defendant company). As stated above, all of these actions were precipitated
 13 by the same event – VeriFone's December 3, 2007 earnings restatement announcement – and implicate
 14 the same set of press releases and Form 10-Qs that VeriFone issued in 2007. As the Court presently has
 15 in front of it nine class actions and multiple pending motions to appoint lead plaintiff and lead counsel
 16 and will, therefore, have to resolve many procedural, factual, and legal issues common to both the
 17 consolidated class actions in *In re Verifone* and *King v. Bergeron et al.*, substantial duplication of labor
 18 and expenses would be avoided by having the Court preside over *King v. Bergeron et al.* as a related
 19 action.
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22 C. CONCLUSION

23 The actions referred to above satisfy the criteria of Civil Local Rule 3-12. Defendants
 24 respectfully request that the cases be deemed related and that *King v. Bergeron et al.* be assigned to the
 25 Honorable Marilyn H. Patel, the Judge assigned to the first-filed action, *Eichenholtz v. VeriFone*
 26 *Holdings Inc., et al.*, Case No. C 07-6140 MHP, which was consolidated into *In re VeriFone* on
 27 February 5, 2008.
 28

Date: February 14, 2008

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